IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUIT NO.199 OF 1995

M/s.Advance Paints Pvt.Ltd. Plaintiffs
vs.
M/s.Marklines & ors. Defendants

Mr.P.V.Bhagat i/by. M/s.Vasant & Co. for the plaintiffs.

None for the defendants.

CORAM : ANOOP V. MOHTA,J.

DATED : 7th June, 2007

ORAL JUDGEMENT.

The present Suit is based on the running account in respect of the goods supplied by the plaintiffs to the defendants from time to time.

2. Though served, none appeared for the defendants. The matter is under the caption of "undefended suit and for filing affidavit of documents and evidence". The plaintiffs have filed the affidavit of one Hoshidar Framroz Pavri, who has also verified and signed the original plaint. The plaintiffs have filed the compilation of documents. Admittedly the averments made in the plaint as well as in the affidavit remained uncontroverted. The suit is based on the balance as on 17.7.1992 filed on 22.11.1994. Therefore the Suit is within limitation.

3. The compilation of documents are marked as Exhibits I-A, I-B, I-C and I-D collectively.

4. The plaintiffs in view of the averments made in paragraph 5 of the affidavit have expressed their inability to file the original books of accounts for the relevant period from 23.2.1990 to 13.7.1992 as not traceable. However, an extract of the statement of account of the defendants copied from the books of accounts maintained by the plaintiffs is annexed as Exhibit "A". Considering the nature of the transaction and the nature of documents placed on record at Exhibit "A", it is difficult to accept these documents as an extract of statement of account as it is admittedly unsigned by the parties.

5. Exhibit "B" is a copy of the letter dated 11.9.1992 sent by the plaintiff's Area Manager to the defendants and demanded the outstanding amount of Rs.74,093.50 as claimed in the Suit. The defendants filed letter dated 14.9.1992 (Exh.C) in reference to the above letter (Exh.B) accepted/admitted that they re ready to clear the disputed bill no.350 dated 31.3.1991 for Rs.60,720/- after receiving credit note of Rs.37,720/- and further ready to pay the balance amount of Rs.23,000/- only. The defendants had denied the other amounts as claimed.

The plaintiffs by its affidavit of evidence relied on the original documents in support of their case apart from the other letters. The admission made by the defendants in this letter, in the facts and circumstances of the case, specially when thee is no denial and/or resistance to the averments made by the plaintiffs need to be accepted in favour of the plaintiffs to the extent of Rs.23,000/- only.

6. The plaintiffs by another letter dated 20.9.1992 have stated that as the defendants failed to clear the said amount further demanded the balance amount as prayed in the plaint, as admittedly the defendants failed to make the payment of Rs.23,000/- as agreed in the letter dated 14.9.1992.

7. Exhibit "B" are the copies of the plaintiffs' record. The contents of which are supported by the affidavit dated 10.4.2007 apart from the averments made in the plaint. Exhibit "C" is the original letter received by the plaintiffs.

8. Taking all this into consideration, I am inclined to grant the decree in favour of the plaintiffs to the extent of Rs.23,000/- towards the balance payment in respect of the goods supplied by the plaintiffs to the defendants.

9. Considering the facts and circumstances of the case, I am inclined to grant the interest at the rate of 9% from the date of admission of the letter dated 14.9.1992 on the amount of Rs.23,000/- only.

ORDER

. "The defendants be jointly and severally ordered and decreed to pay to the plaintiffs a sum of Rs.23,000/- with interest at the rate of 9% p.a. from 14.9.1992 till payment and/or realisation."

. No costs.

[ANOOP V. MOHTA,J.]